

Assembly Bill 1638 (Committee on Revenue and Taxation) Chapter 929*Board-sponsored taxpayers' bill of rights*

Effective January 1, 2000. Adds Section 15620.5 to the Government Code; amends Sections 8262, 8269, 9262, 9269, 9275, 30458.2, 30458.9, 30459.5, 32462, 32469, 32475, 38621, 40202, 40209, 40215, 41162, 41169, 41175, 43513, 43520, 43526, 45858, 45865, 45871, 46613, 46620, 46626, 50112.2, 50156.2, 50156.9, 50156.15, 55323, 55330, 55336, 60623, and 60630 of, adds Sections 6832.5, 6902.4, 7658.1, 8174, 8878.5, 9033, 9184, 9272.1, 11253, 11254, 11409, 30283.5, 30354, 30384, 30459.2A, 32256.5, 32389, 32432, 32472.1, 38455, 38504, 38505, 38624, 40103.5, 40167, 40212.5, 41097.5, 41127.6, 41172.5, 43158.5, 43448, 43484, 43523.5, 45156.5, 45609, 45752, 45868.5, 46157.5, 46464, 46544, 46623.5, 50112.4, 50138.6, 50150.5, 50156.17, 55046, 55209, 55262, 55333.5, 60212, 60493, 60564, 60632.1, 60633.1, and 60633.2 to, the Revenue and Taxation Code.

This Board-sponsored measure strengthens and updates the California Taxpayers' Bill of Rights for the taxes and fees administered by the Board. Specifically, with respect to the sales and use tax program, this bill:

- **Allows the Board to establish a uniform policy regarding a postal delay date in its processing of tax and fee return filings.**
- **Conforms the law, where appropriate, with the Internal Revenue Service Restructuring and Reform Act of 1998 in two areas:**
 - (1) suspends the statute of limitations on filing refund claims during periods of disability, and**
 - (2) requires the Board to provide annual statements to taxpayers who have entered into installment payment agreements summarizing the payment and liability information.**

Law Prior to Amendment (Government Code Section 15620.5):

Existing law, Section 11003 of the Government Code, provides that if an application, tax return or claim for credit or refund required by law to be filed with the State or state agency on or before a specified date is filed with a state agency through the United States mail, properly addressed with postage prepaid, it shall be deemed filed on the date shown by the post office cancellation mark stamped on the envelope containing it, or on the date it was mailed *if satisfactory proof that the mailing occurred on an earlier date is provided.*

Under the provisions of the Revenue and Taxation Code relative to the various taxes and fees administered by the Board, the law prescribes specified dates in which payments, returns, and other information are required to be submitted to the Board. In cases where taxpayers or feepayers fail to timely submit payments or information required, the law may provide for the imposition of interest and penalties. Pursuant to Section 11003 of the Government Code, if the post office cancellation mark shows a date after the due date prescribed by law, and if the taxpayer submits satisfactory proof that the mailing occurred on an earlier date, the Board is authorized to recognize the mailing as being timely and can relieve a taxpayer of any interest and penalty that may have been imposed. The Board's policy permits satisfactory proof of timely mailing through a declaration under penalty of perjury, and has developed a form entitled, "Declaration of Timely Mailing" which is provided to taxpayers for purposes of submitting proof of a timely mailing.

Background:

During a 47-year period from 1950 through 1997, the Board's administrative policy was to in essence allow a 1-day grace period in cases where a mailing was postmarked one day after the due date. For example, if a remittance was due by law on April 30, but was postmarked May 1, the payment was nevertheless deemed to have been made timely. This policy recognized the complications in the U.S. Postal Service and gave the taxpayer the benefit of the doubt that the mailing was actually made timely, but that the postmark did not reflect the actual date in which the mailing was placed in the mail. However, the Board's legal staff reviewed this policy and opined that there was no legal basis in which the Board could legally provide this 1-day grace period. The Board therefore eliminated the 1-day grace period policy.

Comments:

As a consequence to the Board's change in policy, staff workload has increased significantly. This change has resulted in a large increase in late billings, followed by hundreds of taxpayers filing Declarations of Timely Mailing requesting that the penalty and interest be cancelled. And over half of the declarations filed are attributable a mailing that was postmarked only one day after the due date.

This change in policy has also had a negative impact with taxpayers who are usually otherwise in compliance with the law. Many taxpayers are required to file returns on a monthly basis, or a quarterly basis, or on a quarterly basis with two prepayments within each quarter. Due to the frequency of the return filings, it seems logical to authorize the Board to adopt a uniform policy of acceptance of returns based on considerations such as current U.S. Postal Service and technology available for filing. It is interesting to note that the U.S. Postal Service makes special

provisions for accepting state and federal income tax filings by remaining open until midnight on the April 15 due date.

Law Prior to Amendment (Section 6902.4):

The Internal Revenue Service Restructuring and Reform Act of 1998 (the Act) permits equitable tolling of the statute of limitations for refund claims during any period in which an individual is unable to manage his or her financial affairs by reason of a medically determinable physical or mental impairment that can be expected to result in death or to last for a continuous period of not less than 12 months. Under the Act, tolling would not apply, however, for periods in which the taxpayer's spouse or another person are authorized to act on the taxpayer's behalf on financial matters.

Under California's Sales and Use Tax Law, Section 6902 specifies the period in which claims for refund are required to be filed for any overpayments. Under this section, claims for refund are required to be filed no later than three years from the due date of the return, or six months from the date of the overpayment, whichever period expires later. Current law does not provide for equitable tolling under any circumstances.

Comment:

The Board's conformance to the Act will provide equitable relief for those taxpayers that qualify, and will not likely result in a significant increase in staff workload or loss in revenues.

Law Prior to Amendment (Section 6832.5):

The Internal Revenue Service Restructuring and Reform Act of 1998 (the Act) requires the IRS to provide an annual statement to every taxpayer with an installment agreement indicating the initial balance at the beginning of the year, the payments made during the year, and the remaining balance at the end of the year.

Comment:

Through the enactment of AB 821 (Ch. 612) of the 1998 Legislative Session, effective January 1, 1999, the Board gained authorization to enter into installment payment agreements with taxpayers. Conformance with the Act will enhance the Board's services to taxpayers that have entered into these agreements by requiring the Board to provide clear explanations of accrued interest and penalties on their respective tax liabilities. It will also allow taxpayers to clearly track their remaining outstanding liabilities to the Board of Equalization.